UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COASTAL CAISSON CORP., as successor in interest to BAUER OF AMERICA CORP., Petitioner, -v- E.E. CRUZ/NAB/FRONTIER-KEMPER, A Joint Venture, E.E. CRUZ & CO., INC., NAB CONSTRUCTION CORPORATION, FRONTIER-KEMPER CONSTRUCTION, INC., AETNA CASUALTY AND SURETY COMPANY and TRAVELERS CASUALTY AND SURETY COMPANY, Respondents.	05 Civ. 7462 (DLC)
	OPINION AND ORDER
E.E. CRUZ/NAB/FRONTIER-KEMPER, A Joint Venture, E.E. CRUZ & CO., INC., NAB CONSTRUCTION CORPORATION, FRONTIER-KEMPER CONSTRUCTION, INC., AETNA CASUALTY AND SURETY COMPANY and TRAVELERS CASUALTY AND SURETY COMPANY, Petitioners, -v- COASTAL CAISSON CORP., as successor in interest to BAUER OF AMERICA CORP., Respondent.	05 Civ. 7466

Appearances:

For Petitioner/Respondent Coastal Caisson Corp.:
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A Joint Venture, et al.:
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DENISE COTE, District Judge:

This Opinion addresses two petitions, both of which arise from an April 13, 2007 arbitration award ("Second Award") in favor of Coastal Caisson Corp. ("Coastal") and against E.E. Cruz and related parties (the "Joint Venture"). This Second Award was issued after a much smaller June 24, 2005 award in favor of Coastal ("First Award") was vacated.

Coastal moves pursuant to 9 U.S.C. § 9 to confirm the Second Award and pursuant to 9 U.S.C. § 10 to vacate and correct the award as to its denial of prejudgment interest. The Joint Venture moves to vacate the Second Award and to modify and confirm the First Award pursuant to N.Y. C.P.L.R. § 7511(b)-(c), or in the alternative, 9 U.S.C. §§ 9-11. For the following reasons, Coastal's motion to confirm the Second Award is granted. Its motion to modify the Second Award as to interest is denied. The Joint Venture's motions to vacate the Second Award and to confirm and modify the First Award as to interest are also denied.

BACKGROUND

The following facts underlying this dispute were described in an October 14, 2005 Opinion by this Court delivered from the bench, Transcript of Bench Opinion, Coastal Caisson Corp. v. E.E. Cruz/NAB/Frontier-Kemper, No. 05 Civ. 7462, 7466 (DLC) (S.D.N.Y. Oct. 14, 2005) ("Bench Opinion"), and in Coastal Caisson Corp. v. E.E. Cruz/NAB/Frontier-Kemper, No. 05 Civ. 7462, 7466 (DLC), 2006 WL 1593615 (S.D.N.Y. June 8, 2006), which are incorporated by reference. The dispute arose out of a contract between the Joint Venture, a contractor consisting of companies incorporated in New York, New Jersey and Indiana, and Bauer of America Corp. ("Bauer"), to construct Earth Support System walls for the Flushing Bay Combined Sewer Overflow Retention Facility. Coastal is a Florida corporation and the successor in interest to Bauer. Although Coastal initiated litigation in August 1999, Coastal Caisson Corp. v. E.E. Cruz/NAB/Frontier-Kemper, No. 99 Civ. 8852 (SAS), the parties agreed in July 2001 to submit their dispute to arbitration ("Agreement"). The Agreement provides that the American Arbitration Association Construction Industry Rules ("AAA Constr. Indus. R.") apply and that "[t]he laws of the State of New York shall govern this submission to arbitration."

On June 24, 2005, the arbitrators granted Coastal the First Award of $791,731.21,[1] which was the contract balance that the Joint Venture owed Coastal. Coastal moved to vacate the award in part for manifest disregard of the law and to confirm the remainder on August 23. The Joint Venture moved to modify the award for a material miscalculation on August 24. The two petitions were consolidated.

This Court granted Coastal's petition to vacate the First Award for manifest disregard of the law. In an opinion delivered from the bench on October 15, it found that

> [t]he award assumes and the parties don't dispute that the arbitrators found that the [J]oint [V]enture breached its contract with Bauer thereby delaying the completion of Bauer's work, [f]inding that the parties had agreed that the [sic] Bauer's work would be completed by June 1999 but that "by the [J]oint [V]enture[']s conduct" that date became "unrealistic" and that Bauer's work was not completed until November 1999. The award concentrated on determining the amount of damages owed to Bauer.

The Bench Opinion held that the decision by the arbitration panel not to apply total cost damages because of the difficulty in apportioning fault was "clear error" and constituted "the rare case in which it is sufficiently clear that the arbitrators did manifestly disregard the law." Bench Opinion at 12, 14. It vacated and remanded the First Award for an allocation of damages. The Bench Opinion denied as moot Coastal's second

[1] The Bench Opinion erred in stating that the amount of the First Award was $761,731.27.

claim, that the arbitrators manifestly disregarded law when they refused to award prejudgment interest on its contract claims. It also denied as moot the Joint Venture's petition to confirm the award and to correct it for a material miscalculation. On October 18, the matter was remanded to the arbitrators for an award conforming to the Bench Opinion. Coastal Caisson Corp. v. E.E. Cruz/NAB/Frontier-Kemper, No. 05 Civ. 7462, 7466 (DLC), (S.D.N.Y. Oct. 18, 2005) (order vacating and remanding) ("October 18, 2005 Order").

The Joint Venture appealed the October 18, 2005 Order. The United States Court of Appeals for the Second Circuit dismissed the appeal on March 29, 2006, for lack of appellate jurisdiction. Coastal Caisson Corp. v. E.E. Cruz/NAB/Frontier-Kemper, No. 05-6179-cv (2d Cir. Mar. 29, 2006). The mandate enforcing the dismissal was issued on April 19. The Joint Venture subsequently applied for certification of an appeal pursuant to 28 U.S.C. § 1292(b). On June 8, the motion was denied and Coastal's cross-motion to compel the arbitrators to complete their work pursuant to the October 18, 2005 Order was granted.

On April 13, 2007, the arbitrators issued the Second Award, granting Coastal $1,989,466.94 without interest, an amount

almost three times that of the First Award.[2] In adjusting the award, the arbitrators followed the direction of the Bench Opinion.

> Because the Court disagreed with only one part of the First Award, to wit, that we did not apportion the relative fault of the parties and thereby were unable to award to Bauer a portion of its total costs, we incorporate by reference all the balance of the First Award and make it part of this award (the "Second Award"). . . .
>
> The Court's opinion has no quarrel with any other aspect of our award. Both we and the parties assume that it was only the damage apportionment issue which needed to be addressed in the current proceedings.

On this basis, the Second Award incorporated by reference all "findings and conclusion on the Joint Venture's Counterclaim" from the First Award. The arbitrators considered two rounds of briefs on the issue of apportionment and the parties' submission of "voluminous extracts" from the original record.[3]

Noting the Bench Opinion's finding that uncertainty as to the determination of damages and apportionment of fault are not acceptable reasons to refuse to apply the total cost approach, the arbitrators applied the total cost method to compute damages for Bauer. To calculate Bauer's total cost, the Second Award

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[2] One of the three arbitrators dissented in a separately filed opinion.

[3] The Second Award noted that "the very substantial briefs and other materials that the parties submitted on [the issue of apportionment] were essentially a reargument of the positions they have steadfastly held throughout."

first determined its actual cost. It then determined the portion of Bauer's excess costs that were caused by acts or omissions of the Joint Venture and by Bauer itself. The arbitrators reduced Bauer's alleged actual costs by 10% and awarded 15% overhead and profit. They then found that "Bauer's work was impacted by twelve separate items," and that its "excess costs were a result of the fault of both parties." They concluded that the Joint Venture was responsible for only 40% of the excess costs, which when added to the amount owed to Coastal under the contract left a balance due of $3,379,268.92. The arbitrators found that Bauer was due a net amount of $1,989,466.94, after subtracting the total award due to the Joint Venture on its counterclaim from the total award due to Bauer on its claim. On the issue of prejudgment interest, the arbitrators found that

> [a]lthough prejudgment interest may be required by the CPLR, we find that we have discretion under the applicable rules of the American Arbitration Association not to award pre-award interest (See Rule 43(d)). Given the vast uncertainties concerning the amounts due and the reasons for those uncertainties described in our First Award, we think it is highly inappropriate to award interest and we decline to do so.[4]

[4] The Second Award erred in identifying Rule 43(d) as the American Arbitration Association Construction Industry Rule granting arbitrators' discretion to award interest. The correct rule is Rule 44(d), which provides, in pertinent part, that the award of the arbitrator "may include interest at such rate and from such date as the arbitrator may deem appropriate." Rule 44(d), AAA Constr. Indus. R. (emphasis supplied).

Soon after the Second Award was issued, the parties filed the petitions considered in this Opinion. On April 24, 2007, Coastal moved to confirm the Second Arbitration and to modify it to allow interest at the legally prevailing rate from the completion of the work, on or about April 1, 1999, the date it was due the contract balance. On April 27, 2007, the Joint Venture served a petition to vacate the Second Award, to correct the First Award for material miscalculation, and to otherwise confirm the First Award.

DISCUSSION

The Joint Venture petitions this Court to vacate the Second Award on five grounds. Its first two arguments challenge this Court's review of the First Award, arguing that (1) the October 18, 2005 Order improperly substituted a judicial determination for an arbitration decision, and that (2) the Bench Opinion improperly applied the Federal Arbitration Act, rather than New York law, which it contends does not permit setting aside an arbitration award "for manifest disregard of the law." In the event that this Court finds that the Federal Arbitration Act does apply, the Joint Venture argues that the Second Award should be vacated for manifest disregard of the law. It contends that the arbitrators erred (3) by adopting this Court's

description of New York law on the application of total cost damages, (4) by viewing the interpretations of New York law given by the Second Circuit and this Court as controlling, and (5) by granting an award for Coastal absent a finding that the Joint Venture breached the contract. The Joint Venture further argues that (6) the First Award should be corrected for material miscalculation,[5] and (7) that it should be confirmed. Coastal in turn moves to modify the Second Award with respect to its refusal to grant prejudgment interest, and otherwise moves to confirm the award. The following discussion begins with the Joint Venture's petition to vacate.

I. The Joint Venture's Petition to Vacate

It is well-settled that the Federal Arbitration Act ("FAA") "does not confer subject matter jurisdiction on the federal courts even though it creates federal substantive law." Greenberg v. Bear, Stearns & Co., 220 F.3d 22, 25 (2d Cir. 2000). Rather, "[t]here must be an independent basis of jurisdiction before a district court may entertain petitions under the [FAA]." Perpetual Sec., Inc. v. Tang, 290 F.3d 132, 136 (2d Cir. 2002) (citation omitted); see also Greenberg, 220

[5] The Joint Venture has not preserved a miscalculation argument in the event its motion to vacate the Second Award is denied. Nonetheless, the miscalculation argument is briefly addressed below.

F.3d at 25. There is jurisdiction over this petition pursuant to Section 1332 of Title 28, United States Code.

"Normally, confirmation of an arbitration award is a summary proceeding that merely makes what is already a final arbitration award a judgment of the court, and the court must grant the award unless the award is vacated, modified, or corrected." D.H. Blair & Co., Inc. v. Gottdiener, 462 F.3d 95, 110 (2d Cir. 2006) (citation omitted). A court's review of an arbitration award is "severely limited" so as to not unduly frustrate the goals of arbitration, namely to settle disputes efficiently and avoid long and expensive litigation. Willemijn Houdstermaatschappij, BV v. Standard Microsystems Corp., 103 F.3d 9, 12 (2d Cir. 1997) (citation omitted). "The showing required to avoid summary confirmation of an arbitration award is high." Id. "[O]nly a very narrow set of circumstances delineated by statute and case law permit vacatur." Porzig v. Dresdner, Kleinwort, Benson, North America LLC, --- F.3d ---, 2007 WL 2241592, at *3 (2d Cir. Aug. 7, 2007). A party moving to vacate an award therefore bears a "heavy burden," Wallace v. Buttar, 378 F.3d 182, 189 (2d Cir. 2004), and "such relief is appropriately rare." Porzig, 2007 WL 2241592, at *4.

In this case, the Agreement contains a choice of law provision stating that New York law shall apply. The parties' choice of New York law will be honored, since "where parties

have chosen the governing body of law, honoring their choice is necessary to ensure uniform interpretation and enforcement of that agreement and to avoid forum shopping." Motorola Credit Corp. v. Uzan, 388 F.3d 39, 51 (2d Cir. 2004). The Court of Appeals has noted moreover that "respecting the parties' choice of law is fully consistent with the purposes of the FAA." Id.; see Volt Info. Scis., Inc. v. Bd. of Trs., 489 U.S. 468, 479 (1989) ("Where, as here, the parties have agreed to abide by [California] rules of arbitration, enforcing those rules according to the terms of the agreement is fully consistent with the goals of the FAA . . . .").

The FAA enumerates grounds for vacating an arbitration award. See 9 U.S.C. § 10. These grounds "involve corruption, fraud, or some other impropriety on the part of the arbitrators." Wallace, 378 F.3d at 189 (citation omitted). In addition to this statutory authority, a court may vacate an arbitral award "if it exhibits a manifest disregard of the law." Id. (citation omitted). The Court of Appeals has instructed that this is a "doctrine of last resort -- its use is limited only to those exceedingly rare instances where some egregious impropriety on the part of the arbitrators is apparent, but where none of the provisions of the FAA appl[ies]." Id. (citation omitted). A party seeking vacatur on this ground must prove that an arbitrator was "fully aware of the existence of a

clearly defined governing legal principle, but refused to apply it, in effect, ignoring it." Duferco Int'l Steel Trading v. T. Klaveness Shipping A/S, 333 F.3d 383, 389 (2d Cir. 2003).

The Joint Venture has moved to vacate the Second Award pursuant to N.Y. C.P.L.R. § 7511 on the grounds that the Federal Arbitration Act does not apply because the parties freely chose New York law in their Agreement to arbitrate. In the alternative that the federal statute does apply, it brings this motion pursuant to 9 U.S.C. § 10. Since the FAA governs this Court's review of the arbitration awards in this case, the petition is properly brought under 9 U.S.C. § 10. The Joint Venture does not identify any specific statutory ground, however, for its motion to vacate. It does not argue, for example, that the arbitrators were corrupt, impartial or exceeded their power. Its motion must therefore be construed as a motion to vacate the Second Award for manifest disregard of the law.

The Bench Opinion laid out the standard of review for manifest disregard as follows:

> In its decision in Duferco[, 333 F.3d 383,] the Second Circuit articulated a three part inquiry for determining if an arbitrator has acted in manifest disregard of the law.
>
> First, the Court must ask whether the law that was allegedly ignored was clear and was explicitly applicable to the matter before the arbitrators. Id. at 389 to 90.

> Second, the Court must determine whether the law was, in fact, improperly applied[,] giving rise to the erroneous outcome. Id. at 390.
>
> Third, it must be shown that the arbitrator knew of the existence of the proper governing law. This third step means that the proper law must have either been identified to the arbitrator by the parties in the arbitration or the error must be so obvious that it would instantly proceed to such by the average person qualified to serve as an arbitrator.[6]

Bench Opinion at 8.

A. Challenge to the First Award

The Joint Venture contends that this Court exceeded its authority when it vacated the First Award. It did not. In issuing the Bench Opinion, this Court found that the arbitrators' refusal to apply the total cost method of calculating damages due to the difficulty of apportioning fault for delays in a factually complex construction dispute was "clear error." Bench Opinion at 12. That ruling was not a prohibited factual determination, as the Joint Venture claims, but a legal determination falling within a well-established standard of review. The Joint Venture's claims that this Court

[6] As explained in D.H. Blair, 462 F.3d 95, this last phrase means only that "an arbitrator's error in interpreting the legal doctrine relied upon by the parties can constitute manifest disregard if the average person qualified to serve as an arbitrator would not have made such an interpretation." Id. at 111 (emphasis supplied). This clarification of the Duferco test has no effect on the analysis undertaken in the Bench Opinion.

improperly imposed its own determination on factual issues and that the manifest disregard of law standard does not apply, are both rejected.[7]

The Joint Venture's reliance on Major League Baseball Players Assoc. v. Garvey, 532 U.S. 504 (2001), is unavailing. The Supreme Court in Major League Baseball considered a Court of Appeals decision to vacate an arbitration award that resolved "the merits of the parties' dispute on the basis of its own factual determinations," and "usurped the arbitrators' role by resolving the dispute and barring further [arbitration] proceedings . . . ." Id. at 511. The Joint Venture fails to demonstrate that the Bench Opinion engaged in a similar usurpation of the arbitrators' role. The Bench Opinion explicitly reserved decisionmaking authority for the panel by stating that "[t]he panel in reconsidering their award [has] discretion to make any changes to the award that they see fit . . . ." Bench Opinion at 14.

The Joint Venture next argues that it was error for this Court to require the arbitrators to follow the total cost method of calculating damages in breach of contract claims as described

[7] The Joint Venture's claim that the FAA and caselaw interpreting the statute are inapplicable to this case, where the parties have chosen New York law in the Agreement, is also rejected.

in Thalle Contr. Co., Inc. v. Whiting-Turner Contracting Co., Inc., 39 F.3d 412 (2d Cir. 1994). They argue that this Court,

> having not reviewed the record and exhibits before the Arbitrators before dictating that opinion from the bench, in error assumed and directed the Arbitrators upon remand that the [sic] Bauer's claim was a delay claim and that the New York state law concerning the total cost method of computing damages adopted by the Second Circuit decision in Thalle dealing with a delay claim was binding upon the Arbitrators.

In support, the Joint Venture cites Wallace v. Buttar, 378 F.3d 182, for the proposition that arbitrators are not required "to ascertain the legal principles that govern a particular claim through the conduct of independent legal research," but rather are expected "to ascertain the law through the arguments put before them by the parties to an arbitration proceeding." Id. at 191 n.3. This case is inapposite. As noted in the Bench Opinion, the parties did describe the Thalle decision to the arbitrators and they were specifically aware of the Thalle decision. Bench Opinion at 14.

The Joint Venture contends as well that Thalle did not need to be followed because Coastal's claim was not a delay claim and that the arbitrators did not find in either the First or Second Award that the Joint Venture had breached the contract. These arguments can be swiftly rejected. Coastal brought a delay claim. The arbitrators' First Award was premised on their finding of breach and only makes sense in that context. The

Bench Opinion observed that "[t]he [First Award] assumes and the parties do not dispute that the arbitrators found that the [J]oint [V]enture breached its contract with Bauer[,] thereby delaying the completion of Bauer's work." Bench Opinion at 10. Furthermore, the arbitrators implicitly accepted this characterization as accurate when they issued the Second Award and found that this Court "disagreed with only one part of the First Award, to wit, that we did not apportion the relative fault of the parties and thereby were unable to award to Bauer a portion of its total cost . . . ."

The Joint Venture's motion to vacate the Second Award fails. For the same reasons its motion to confirm the First Award is denied.

B. Motion to Correct for Material Miscalculation

The Joint Venture moves to correct the First Award as to a material miscalculation, but has not made a parallel motion with respect to the Second Award. To the extent that the Joint Venture has preserved its miscalculation argument with respect to the Second Award, a brief discussion will suffice.

The Joint Venture contends that the calculations which led to the First Award contained two mathematical errors in a total amount of about $548,000. One involved how a Joint Venture payment in the amount of roughly $331,000 to a concrete supplier

related to the damages award. In attacking the First Award, which did not award total cost damages, the Joint Venture argued that it was error for the arbitrators to give the Joint Venture a credit for payments made directly by the Joint Venture to Coastal but to omit giving the Joint Venture a credit as well for the amount paid to the concrete supplier on behalf of Coastal. The second alleged error in the First Award involved the amount of just over $216,000, and related to the size of the caisson wall. According to the Joint Venture, the First Award acknowledged a dispute between the parties over the size of the wall, with Coastal having asserted that the wall contained approximately 6,000 more square feet than the Joint Venture had identified. Although its papers are confusing on this point, it appears that the Joint Venture contends that Coastal later admitted that it was in error in asserting that the wall was larger, and that when the arbitrators stated in the First Award that they were denying "all other" claims of both parties, they should have denied as well any award based on Coastal's initial assertion that the wall was larger than the Joint Venture estimated.

These issues were raised directly with the arbitrators, who denied them through an order issued on August 11, 2005. This denial is sufficient to lay this attack to rest. The arbitrators would have had the power to correct any

computational errors, nothing suggests that they misapprehended their authority in that regard, and they declined to make any alteration in the First Award. Coastal has shown that the arbitrators decided these issues in its favor on the merits and the Joint Venture has not shown that there is any ground for this Court to remand these issues for further review. The Joint Venture has utterly failed to show, in any event, that these alleged errors also affect the validity of the Second Award.

II. Coastal's Petition to Correct and Confirm

Coastal moves to "correct" the Second Award as to its denial of prejudgment interest pursuant to 9 U.S.C. § 10, and moves to otherwise confirm the award pursuant to 9 U.S.C. § 9. It seeks an award of prejudgment interest from April 1, 1999, the date the contract balance was due to Coastal, at the New York statutory rate of 9%. N.Y. C.P.L.R. § 5004.

Coastal does not allege that the arbitrators erred in denying prejudgment interest in the Second Award according to any of the statutory grounds set forth by 9 U.S.C. §§ 10 and 11. In the absence of any indication that Coastal is relying on any enumerated statutory ground for its motion to "correct" the Second Award as to interest, this prong of Coastal's motion is properly construed as a motion to vacate the Second Award's

denial of prejudgment interest for manifest disregard of the law.

In declining to award prejudgment interest, the arbitrators recognized that the N.Y. C.P.L.R. ordinarily requires such an award but declined to grant interest in an exercise of discretion under the rules of the American Arbitration Association because of the uncertainties associated with determining damages. They found it "highly inappropriate to award interest" in this case.

The arbitrators did not disregard law in exercising their discretion to deny Coastal prejudgment interest. The parties agreed that the American Arbitration Association Construction Industry Rules and New York law would apply to the arbitration of their dispute. Rule 44(d) provides that "[t]he award of the arbitrator may include interest at such rate and from such date as the arbitrator may deem appropriate." Rule 44(d), AAA Constr. Indus. R. (emphasis supplied). In contrast to the discretionary language of Rule 44(d), N.Y. C.P.L.R. § 5001 ("Section 5001"), the New York statute governing the award of prejudgment interest, provides that interest may be required by law.

> Interest shall be recovered upon a sum awarded because of a breach of performance of a contract, or because of an act or omission depriving or otherwise interfering with title to, or possession or enjoyment of, property, except that in an action of an equitable nature, interest and the rate and

> date from which it shall be computed shall be in the court's discretion.

N.Y. C.P.L.R. § 5001 (emphasis supplied). "Under New York Law, prejudgment interest is normally recoverable as a matter of right in an action at law for breach of contract." New England Ins. Co. v. Healthcare Underwriters Mut. Ins. Co., 352 F.3d 599, 606 (2d Cir. 2003) (citation omitted) (emphasis supplied). While Section 5001 permits a court to exercise discretion in the grant of interest in cases arising in equity, Rosenblum v. Aetna Casualty & Surety, 439 N.Y.S.2d 482, 483 (App. Div. 1981), the Court of Appeals has noted the provision's "mandatory" language regarding the award of prejudgment interest in cases involving breach of contract claims.

The parties to an arbitration, however, are permitted to "specify by contract the rules under which that arbitration will be conducted." Volt, 489 U.S. at 479. While Coastal now characterizes the American Arbitration Association Construction Industry Rules as "optional," it consented to these rules in the Agreement and a court must "rigorously enforce such agreements according to their terms." Id. (citation omitted). Rule 44(d) applies to this action, and permits the arbitrators to exercise discretion in granting Coastal prejudgment interest.

Given the tension between Rule 44(d) and Section 5001, it is appropriate to refrain from vacating an arbitral award and to

defer to the arbitrators' judgment. See Nicoletti v. Hutton & Co., Inc., 761 F. Supp. 312, 313 (S.D.N.Y. Apr. 16, 1991) (refusing to vacate arbitration award that declined to award prejudgment interest). While this Court has once vacated an award of the arbitration panel in this case for manifest disregard of the law, Coastal has not demonstrated that the Second Award exhibits factors that together "overcome the deference owed to the [p]anel's award." Porzig, 2007 WL 2241592, at *4.

While Coastal curiously turns to Shamah v. Schweiger, 21 F. Supp. 2d 208 (E.D.N.Y. 1998), for support, this case provides it no assistance. The court in Shamah denied a motion to modify an arbitration award that granted the prevailing party prejudgment interest at the Pennsylvania statutory rate of 6% rather than the arguably applicable New York statutory rate of 9%. Id. at 217. Rather than providing support for the proposition that an arbitration award may be vacated and corrected as to the issue interest, Shamah supports the opposite conclusion. Coastal has not pointed to a case in which a court corrected an arbitration award's decision on prejudgment interest. Its motion to correct the Second Award as to interest is therefore denied.

CONCLUSION

Coastal's motion to confirm the Second Award is granted. Its motion to modify the Second Award as to interest is denied. The Joint Venture's motions to vacate the Second Award and to confirm and modify the First Award are also denied. The Clerk of Court shall close this case.[8]

SO ORDERED:

Dated: New York, New York
August 10, 2007

DENISE COTE
United States District Judge

[8] The motions associated with document numbers 39, 42 and 44 in 05 Civ. 7462, and with document numbers 39 and 42 in 05 Civ. 7466 shall be terminated.